



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

DRAFT

Date Amended	06/21/04	Bill No:	AB 1412
Subject:	Kopp Act	Author:	Wolk
Board Position:		Related Bills:	SB 548 (Burton)

BILL SUMMARY

This bill would require a Member of the Board to disclose that they have received a contribution of \$250 or more from a committee controlled by a person who has an adjudicatory proceeding pending before the Board of Equalization.

Summary of Amendments

The previous version of the bill would have authorized numerous cities to impose a transactions and use tax, subject to voter approval. Those provisions were deleted from the bill.

ANALYSIS

Current Law

As part of a comprehensive governmental ethics reform measure, Senate Bill 1738 (Chapter 84, Statutes of 1990) enacted the Quentin L. Kopp Conflict of Interest Act of 1990 (Section 15626 of the Government Code). The Act requires that, prior to rendering any decision in any adjudicatory proceeding before the Board, each Member who knows or has reason to know that he or she received a contribution of \$250 or more within the preceding 12 months from a party or participant, or his or her agent, shall disclose that fact on the record of the proceeding, as specified. Further, each Member is prohibited from participating in the decision or using his or her position to influence the decision if a contribution was made, as specified. The Act also provides that a party or a participant is required to disclose for the record if there has been a contribution to a Member of \$250 or more in the preceding 12 months. The Act further requires that Board staff must inquire and report to the Board whether any such contributions have been made. Any person who knowingly or willfully violates any of those provisions is guilty of a misdemeanor. Currently, contributions by Political Action Committees (PACs) are not subject to the contribution limits and disclosure requirements in the Act.

Proposed Law

This bill would amend Government Code Section 15626 to provide party, participant, and agent include any committee controlled by that person for purposes of complying with the Kopp Act disclosure and disqualification provisions. For purposes of this provision, "committee" would have the same meaning as prescribed in Government Code Section 82013 and related regulations.

COMMENTS

1. **Sponsor and Purpose.** This provision is sponsored by the author in order to require taxpayers who have a pending case before the Members, and who control a committee, to disclose that information to the Members. The author believes current law allows taxpayers to avoid the spirit of the Kopp Act.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

2. **The purpose of disclosure of contribution differs dramatically between Members of the Board and legislators.** While both Members of the Board and legislators must disclose their campaign contributions, legislators are not disqualified from voting on issues unless they have a personal economic interest in a specific measure. Members of the Board must disqualify themselves from voting if they have received a \$250 contribution from a party, participant, or agent in an adjudicatory proceeding before the Board. Because of this fundamental difference, the expansion by this measure of the Kopp Act to include certain committee contributions imposes even greater reporting, disclosure, and vote disqualification responsibilities than those imposed on the Legislature.
3. **Current law does not contain any criminal sanctions for a party, participant, or agent who does not properly disclose a contribution to a Member.** If a party with an issue before the Board fails to disclose a contribution to a Member, there are no consequences for that party. Conversely, Members who fail to disclose could be subject to fines and possible disqualification from running for elective office. Since this measure increases the number of disclosable contributions, this inequity could only result in increased penalties for the Members, but not for a party with adjudicatory proceeding before the Board.
4. **The lack of a definition of 'controlled' raises the following concerns.** Is an "Employees Good Government Club" committee that includes a party's name controlled by the party, even though it consists entirely of employee contributions? How should a party (or participant or agent) with a committee that does not use the party's name be treated? How should a committee consisting of multiple separate corporations that separately appear in different cases be treated?

The existing Political Reform Act does not require committees to report whether they are "controlled" by anyone other than candidates [Government Code Section 82016 (defining "candidate controlled committee" is the only Political Reform Act definition statute (in Government Code Sections 82000-82055) that uses the word "controlled", and it uses the terms "significant influence on the actions or decisions of the committee.")] However, "significant influence" needs a more precise definition, or else Members of the Board and the State Controller run the risk of inadvertently violating the Kopp Act. These violations carry \$10,000 fines and a disqualification from running for elective office.

For the purpose of eliminating any uncertainty and establishing a measurable guideline, and allowing the Members to comply with the provisions of this bill, Board staff suggests that the term 'controlled' or 'controlled committee' be defined in the statute. Such a definition would preclude any misunderstandings in the future and the need for clarifying regulations.

5. **Related legislation.** Senate Bill 548 (Burton) would increase the Kopp Act reportable contributions to a Member of the Board from \$250 to \$1,000, and require that a contribution to any Member of the Board aggregating \$1,000 or more from a committee that has received a contribution aggregating \$1,000 or more within the preceding 12 months from a corporation that is a party, participant, or agent to any Board hearing be included among contributions subject to Kopp Act provisions. That bill has been pending in the Assembly Revenue and Taxation Committee since last July.

COST ESTIMATE

A detailed cost estimate is pending. Without clarifying amendments to define “controlled committee,” the Board may incur unabsorbable cost to administer the provisions of this bill.

REVENUE ESTIMATE

This measure would not impact the state’s revenues.

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